

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Case No. 01-01139 (JKF)  
. Chapter 11  
. Jointly Administered  
W.R. GRACE & CO., et al., .  
. 824 Market Street  
. Wilmington, Delaware 19801  
Debtors. .  
. April 25, 2007  
. . . . . 10.04 a.m.

TRANSCRIPT OF MOTION HEARING  
BEFORE HONORABLE JUDITH K. FITZGERALD  
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: All rise.

2 THE COURT: Good afternoon. Please be seated. This  
3 is the matter of W.R. Grace, Bankruptcy Number 01-1139. This  
4 is the time set for an argument concerning a waiver issue with  
5 regard to debtors' objection to certain proofs of claim. On  
6 the phone I have Dan Hood, Glenn Connor, Mark Hurford, Kenneth  
7 Thomas, John Phillips, Edward Westbrook, Gary Becker, Jarrad  
8 Wright, Jay Sakalo, Scott Baena, Marion Fairey, David Beane,  
9 Alan Madian, Timothy Cairns, James O'Neill, Andrew Craig,  
10 Debroah Felder, Matthew Kramer, Ted Tacconnelli, Arlene  
11 Krieger, Darrell Scott and Martin Dies. I'll take entries in  
12 court, please.

13 MR. RESTIVO: James Restivo and Douglas Cameron for  
14 the debtors, Your Honor.

15 MR. SPEIGHTS: Dan Speights for the Speights & Runyon  
16 claimants, Your Honor.

17 THE COURT: Mr. Restivo?

18 MR. RESTIVO: Good morning, Your Honor. At Document  
19 Number 15172 is Anderson Memorial Hospital's motion to extend  
20 deadlines, which was filed by Mr. Speights on April 13, 2007,  
21 and Mr. Speights and I have agreed that since it's his motion I  
22 have to let him go first, which I will. When we received that  
23 motion, rather than attempt to resolve that in advance of the  
24 product I.D. hearings that took place yesterday and the day  
25 before, Mr. Speights and I agreed we would simply defer these

1 claims, bring this matter to the Court's attention for  
2 guidance, and if the debtor is correct that they need to --  
3 that we have not waived product I.D. objections, it will  
4 probably take one day to try these cases, and we would attempt  
5 to do that on one of the days the Court has set aside for  
6 property damage, and so that is how we get here today.

7           The only other comment I would make is that Mr.  
8 Speights has been extremely professional, both with respect to  
9 extending this motion so we could argue it today, and, as the  
10 Court knows, he and I were able to make some progress in  
11 cutting down the list of claims, and I have promised him and I  
12 think he's promised me, once we get a breather, he and I are  
13 going to look at these 26 claims, assuming they're still in  
14 play, and see whether or not we can't use the same process we  
15 used on some of the other claims. And so I think the  
16 discussions has been very professional and wanted to the Court  
17 to know that.

18           THE COURT: All right. Thank you. Mr. Speights.

19           MR. SPEIGHTS: May it please the Court, the only  
20 pleading before Your Honor today is our motion to extend  
21 deadlines, which, as I understand the rules in Delaware, would  
22 provide a bridge order. And I lead off with that statement  
23 because I think it's significant what is not before you today,  
24 Your Honor, and I say what's not before you because, first of  
25 all, there are no objections on product I.D. to these 26 claims

1 before Your Honor. The debtors want to object to them. I  
2 suspect they will argue that later on in one of their reports  
3 some or all of these claims were addressed, but I think it is  
4 undisputed that these claims, these 26 claims, were not  
5 objected to in their original fifteenth omnibus objection filed  
6 on September 1 or 2, 2005, or attached in the Schedule A to the  
7 Court's October 2006 CMO, and as I will discuss in a few  
8 minutes, Speights & Runyon relied on the absence of these  
9 objections.

10 In addition, Your Honor, I point out that there is no  
11 motion before you by the debtors, and I raise that not because  
12 I'm trying to be a technical lawyer or not because I'm trying  
13 to get another trip to Pittsburgh, but because --

14 THE COURT: Such beautiful weather, Mr. Speights.

15 MR. SPEIGHTS: I understand I'm supposed to move --  
16 talk quickly to try to beat the bad weather coming in. I say  
17 that because -- not to be technical, but because I think it's  
18 important that we sit back and say how should this be properly  
19 teed up, and I think it should properly be teed up by the  
20 debtors making some sort of motion, a motion to amend their  
21 objections, a motion to amend Your Court's scheduling order, a  
22 motion to further -- for further relief of the local Delaware  
23 rule which requires all of the claims to be filed -- all of the  
24 objections to be filed at one time, subject to your order  
25 allowing some deviation from that rule. But there should be

1 something that the debtor comes forward with which makes it  
2 clear that, number one, they have the burden of proof, and,  
3 number two, that puts cause before you. I mean, Mr. Restivo or  
4 Mr. Cameron, whichever one will argue the motion, will be very  
5 articulate in arguing that they should be allowed to proceed  
6 with objections on these claims which they never filed. But  
7 the fact is on a motion they would attach something, an  
8 affidavit or a deposition or something in support of their  
9 argument. It may be there was -- and, of course, we all  
10 understand in the room that the original objections were filed  
11 by Kirkland & Ellis, and the schedule was filed by Kirkland &  
12 Ellis, at least I believe that's the case, and they might not  
13 even know why these objections were not made, but certainly  
14 we're entitled to know whether they're seeking relief because  
15 of some excusable neglect or some tactical decision that they  
16 now disagree with, et cetera, et cetera.

17           So, my first statement, Your Honor, is while I'm  
18 going to -- while I have the podium argue some on the merits, I  
19 really think it's premature to be arguing this before they file  
20 in some form some motion which seeks some relief for the fact  
21 that they did not object on product identification grounds to  
22 these claims.

23           The second thing I would say at the outset, though,  
24 Your Honor, is that in reality Your Honor has already ruled on  
25 this. If you haven't ruled, at least you have made it clear



1 what your view of this issue is. The last time I was in  
2 Pittsburgh, Your Honor, arguing the statute of limitations  
3 summary judgment motions, the same issue came up with respect  
4 to I believe it was the New York claims in which the debtors  
5 had objected on constructive notice, but not on actual notice,  
6 and I made the statement and went through the history at that  
7 time, and I see Your Honor's nod, so I'm not going to go  
8 through the history again, but my word was painstaking, which  
9 Your Honor adopted, and what you said in unmistakable terms  
10 that the debtor had gone through with claimants a painstaking  
11 process to produce this objections and it was the debtors'  
12 responsibility to make sure they objected correctly, and,  
13 therefore, you were not, and with an exception not applicable  
14 here, going to permit the debtors in that proceeding, I believe  
15 there is no written order yet, to come along later and change  
16 their statute of limitations objection when the claimants were  
17 on notice only of constructive notice and now allow them to  
18 come forward with actual notice.

19 So, number one, there is no motion before by the  
20 debtors and, number two, I believe Your Honor has already  
21 advised the parties what its view is on this matter, and, Your  
22 Honor, I think Your Honor is correct on that view because as  
23 Your Honor well knows, without again reciting the history, but  
24 making the point, it was the debtors which sought relief from  
25 the local rule in this court which otherwise would have had me

1 up here for some extended period of time arguing all of my  
2 objections to all of my claims. The debtors convinced Your  
3 Honor, and I understand the ruling, that they could proceed in  
4 a certain way provided they jumped over all the hurdles in  
5 front of them, and they filed this objections back in September  
6 2005, and from that date until today, they have not sought the  
7 amendment of the objections and they have not sought to amend  
8 this Court's order.

9           Now, Your Honor, we relied on that. First of all,  
10 when Your Honor -- and I have citations if there's any question  
11 about it, but I have discussed these matters so many times with  
12 Your Honor I think you know them by heart, as I keep citing  
13 them to you. Your Honor will recall when we had the  
14 transformation in August of 2006 from an estimation to a claims  
15 objections proceeding that I stood up and something to the  
16 effect, well, Your Honor, I have now been invited to the party  
17 -- I think those were my exact words -- and I just want to make  
18 sure I'm on notice as to everything that's going on here  
19 because thus far it's been a committee matter. And Your Honor  
20 said, I'm not going to require them to serve you with some  
21 special paper, Your Honor -- Mr. Speights, but, if you want to  
22 know the basis of these objections, send them contention  
23 interrogatories, and that's exactly what my law firm did.

24           My law firm went through the objections, and for  
25 those objections which they made in their fifteenth omnibus

1 objection, and by then in the Schedule A attached to the  
2 October CMO, we filed contention interrogatories and Grace  
3 responded to those contention interrogatories. We did not file  
4 contention interrogatories as to those I don't believe, unless  
5 there is something I don't understand about -- we did not file  
6 contention interrogatories as to those which they didn't object  
7 to. And then we took Dr. Lee's deposition, and when we took  
8 Dr. Lee's deposition, we asked him -- Mr. Fairey actually took  
9 the deposition. I was not there. Mr. Mr. Fairey asked him  
10 about the claims that had been objected to and did not ask him  
11 about the claims which had not been objected to.

12           So, Your Honor, we have relied on the absence of  
13 objections and we have relied on the court orders, and we  
14 didn't hide the ball. Back in March, Your Honor -- excuse me  
15 one moment. Back in March, Your Honor, I think it was March  
16 19, the debtors' -- in response to the debtors' motions for  
17 summary judgment on statute of limitations, we raised this  
18 precise issue, as, I believe, our first argument in response to  
19 their motions for summary judgment, that as to certain claims  
20 they had not filed objections on statute of limitations grounds  
21 or on the particular statute of limitations ground that they  
22 were proceeding with or wanted to proceed with before the  
23 Court.

24           Now, I'm not sure what the debtors' answer is to all  
25 of this, but I will address one or two things which Mr. Restivo

1 mentioned the other day when we got off track just a little  
2 bit. I think I got us off track before Mr. Restivo did in  
3 getting a little bit on the merits of this matter when we were  
4 simply trying to schedule it, but suggested something that,  
5 well, Mr. Speights was not surprised because Dr. Lee addressed  
6 these issues in his report. I assume that's the case. Dr. Lee  
7 issued a report back in 2006. Many of those claims have gone  
8 beyond -- to the wayside. Some have been withdrawn by me.  
9 Some the objections have been withdrawn, et cetera, et cetera.

10           The fact of the matter is, though, that the fact that  
11 Dr. Lee put in a report, in a lengthy, lengthy report, some  
12 commentary on claims which Grace did not object to is neither  
13 here nor there. It means nothing. They've got to have an  
14 objection. It's like if there's an automobile wreck out here  
15 and I don't bring a lawsuit and later an expert files a report  
16 on a bunch of wrecks and comments on the lawsuit that was never  
17 brought before Your Honor. There was no objection. The fact  
18 that Dr. Lee may have discussed something is neither here nor  
19 there. Nor did we question Dr. Lee because we relied on the  
20 court orders and the objections that were on file. If  
21 anything, it shows that we didn't question him about those and  
22 we only served discovery as to those that objected, which would  
23 have put the debtors on notice. And, in fact, the debtors  
24 never raised that. They did not even raise that in discussions  
25 after receiving our brief on statute of limitations. I raised

1 it when Mr. Restivo forwarded me, pursuant to the Court's  
2 order, a list of the claims that they wanted to go forward with  
3 and the order they wanted to go forward with them.

4 So, I think it's basically a simple issue, Your  
5 Honor. They didn't object, and they should file a motion, and  
6 I will argue strenuously that's it too late when they file  
7 their motion and that Your Honor shouldn't amend it at that  
8 time.

9 Lastly, Your Honor, I would point out the  
10 inconsistency of what I perceive to be the debtors' position.  
11 Your Honor just entered an order recently striking 71 Speights  
12 & Runyon claims because you found that there was no relation  
13 back, that the authority signed after the bar date did not  
14 ratify the authority we asserted before the bar date. I  
15 understand the Court's ruling. It was issued at -- upon motion  
16 by Grace. And here is Grace now sitting in this courtroom, and  
17 maybe legally there's some distinction to be made. I'm not  
18 arguing that. But it certainly appears to me to be very  
19 inconsistent for Grace to try to argue that, well, Lee's report  
20 somehow ratifies our failure to object to the claims later.  
21 They simply did not object, and they should suffer the  
22 consequences. Thank you, Your Honor.

23 THE COURT: Mr. Restivo?

24 MR. RESTIVO: I'm going to put our position, Your  
25 Honor, in context. On September 1, 2005, the debtor filed its

1 fifteenth omnibus objection to property damage claims. In  
2 retrospect and with Monday morning quarterbacking, and I admit  
3 I'm doing that, that may have been too ambitious a filing. In  
4 the fifteenth omnibus objection, the debtor attempted as best  
5 it could to describe and list its objections to thirty-nine  
6 hundred and fifty of the remaining forty-two hundred original  
7 property damage claims using a process of going through the  
8 mountain of information that was being continually submitted by  
9 claimants, not just Speights & Runyon, in lieu of answers to  
10 the specific questionnaire.

11 I suggest this may have been too ambitious because in  
12 an effort to disclose the objections -- by my count there were  
13 at least 26 separate objection categories that Grace attempted  
14 to put the claims into, many of those falling into multiple  
15 subcategories. Perhaps Grace was a little surprised by the  
16 influx of forty-two hundred property damage claims because at  
17 the time of the bankruptcy there were only seven property  
18 damage claims pending. In any event, as of the fifteenth  
19 omnibus objection, there were 3,950 pending property damage  
20 claims, of which 3,000 of those were Speights & Runyon claims.

21 THE COURT: Well, I mean, I appreciate all that, Mr.  
22 Restivo, but this was still the debtor's choice. Nobody forced  
23 the debtor into this. This is what the debtor asked to do.

24 MR. RESTIVO: I appreciate that, Your Honor, and  
25 Objection C, Your Honor, was a product identification

1 objection. Okay. There is in Objection C objection to the  
2 claims Mr. Speights is talking about, at least to 22 of the 24  
3 claims. The difficulty, I believe, and, again, with Monday  
4 morning category (sic), is that the product I.D. objections  
5 were then subdivided into further categories. Category C-1  
6 were objections that generally were based upon incomplete  
7 information, either missing information about the building,  
8 about the claimant, about the address, asserting multiple  
9 claims. C-2 was insufficient documentation. Either you didn't  
10 attach the documents or referred to the documents and you  
11 didn't attach them, or you referred to some documents but not  
12 all documents, or the documents were inconsistent. Category  
13 C-3 were objections generally that you failed to identify a  
14 Grace product, and there there were reference to subcategories  
15 of backup documentation inconsistent with the formula, the  
16 failure to attach the documentation, inconsistent. And  
17 Objection C-4 was failing to rule out other products. And so  
18 there was a product identification objection to all but five of  
19 these claims. I will concede that whether or not a particular  
20 objection was C-2D versus C-1B is not entirely clear and people  
21 were a little overambitious.

22           In any event, Your Honor, the Court may recall I  
23 became involved in this aspect of the case, more active, in  
24 around August of 2006, when the Kirkland & Ellis attorney  
25 responsible for this went on to other opportunities. On

1 October 13, this Court issued a case management order. Under  
2 that case management order, there were different time frames  
3 for different things. With respect to product identification,  
4 claimants were required to go first on expert reports, and they  
5 needed to file an expert report on December 21, 2006.

6 I have handed up to the Court the Speights & Runyon  
7 filing on that date of the designation of expert reports  
8 relating to product identification. You will see, Your Honor,  
9 that they are dealing here with, among others, the expert  
10 report of Dr. Donald Pinshen. You will see, Your Honor -- and  
11 I have highlighted it, I have marked-up this document with my  
12 own highlighting -- that Dr. Pinshen submitted expert reports  
13 on product identification for many of these claims which we had  
14 objected to, and they are noted, again, in yellow, and I'm not  
15 going to read them all in the record. And so before Dr. Lee  
16 ever submitted his report, Speights & Runyon and Dr. Pinshen  
17 knew we were objecting on product identification grounds to  
18 these claims and Pinshen filed reports with respect to all the  
19 ones I've highlighted here. I should have counted up the  
20 number, Your Honor. I don't know whether it's 20 or 22 or --  
21 but it's most of the claims, and so a suggestion that something  
22 was done or not done in reliance upon the specific subsection  
23 of a C objection isn't entirely accurate because clearly they  
24 had their expert file product I.D. reports on these claims.

25 On January 17, 2007, under the Court's case



1 management order, we had to file our expert report.

2 (Pause)

3 MR. RESTIVO: As a result of the hearing over the  
4 last two days, the Court is well aware of the fact that Dr.  
5 Richard Lee filed a report on that date. I have handed up to  
6 the Court and to counsel Appendix B of that report, and I have,  
7 again, highlighted those claims we are talking about in which  
8 Dr. Lee reported on either insufficient information, wrong  
9 components, insufficient -- not a Grace product. Most of those  
10 -- I haven't done a check -- are not different than the ones  
11 Dr. Pinshen filed a report on. And so based both upon the  
12 Pinshen report and the Lee report, clearly these claims were  
13 objected to on product identification, and everyone knew it.

14 It is true, as Mr. Speights concedes, that on  
15 February 14 Bud Fairey of Speights & Runyon took the deposition  
16 of Dr. Lee, had Dr. Lee's report. He started at 9:05. He  
17 ended at 1:36 p.m. We took a 45 minute lunch break. And Dr.  
18 Lee was available to answer any questions about any claims in  
19 his report.

20 On March 14, 2007, my partner, Mr. Cameron, took the  
21 deposition of Dr. Pinshen. Mr. Cameron generally examined Dr.  
22 Pinshen about his reports, all of which are basically the same,  
23 the only difference is the building, and specifically  
24 questioned Mr. Pinshen about building Numbers 12309, 12314,  
25 12368, 12395 and 12396, all covered by what Mr. Speights is

1 talking about. So, again, everyone knew these buildings were  
2 in play.

3 Lastly, Your Honor --

4 (Pause)

5 MR. RESTIVO: -- Mr. Speights made reference to  
6 discovery that he served. He correctly stated he did not serve  
7 this discovery for these buildings. I have handed up to the  
8 Court and highlighted what the discovery was like as to each  
9 building, and I think it's true that the questions were the  
10 same. Just the building was different. I don't believe with  
11 respect to the Canadian buildings there was any difference in  
12 the questions.

13 If Your Honor turns to Page 8, you will see that  
14 there is a single, relatively simple question, "Do you contend  
15 that Grace did not manufacture any asbestos-containing material  
16 installed in the building, and, if so, tell us why you say  
17 that." As a result of the Dr. Rich Lee report, they already  
18 have this information, and so there's been no intentional  
19 waiver of a product I.D. defense. Indeed a product I.D.  
20 defense, in fact, was raised and listed. I concede a  
21 subcategory of that defense may not have been updated, but  
22 product I.D. as a defense was raised.

23 My suggestion for moving this forward is that we  
24 would, by the end of next week, answer Interrogatory Number 5  
25 that says they already know the information, but we'll put it

1 in an interrogatory answer, that we contend that this is not a  
2 Grace product and, if so, why. We will tell him what the Rich  
3 Lee bulk samples show and why we say that. I think that has  
4 the same effect of filing more paper to amend what at this  
5 point is kind of a stale objection because it deals with so  
6 many claims. And we will have a piece of paper that, in  
7 effect, answers his interrogatory, which, again, wasn't served  
8 on these buildings, so that we have a record of what our  
9 objection is on these 26 claims, and then we ought to try those  
10 26 claims.

11 Mr. Speights and I -- if I'm correct, we haven't  
12 intentionally waived an objection -- believe that can be done  
13 in one day. Mr. Speights and I talked about, if we haven't  
14 waived, taking one day on May 7, May 8 or May 9. The Court  
15 observed yesterday, and my partners subsequently observed to me  
16 after the hearing, that it might be time for a breather. We're  
17 all going pretty hard. I had mentioned that to Mr. Speights  
18 this morning.

19 And so assuming we haven't intentionally waived a  
20 product I.D. defense because we didn't put in the C-1  
21 subcategory, my suggestion is we take either May 30 or May 31,  
22 which right now I think we have set aside for the no hazard  
23 hearing, but the scheduling of no hazard and we're going on  
24 that, subject to rulings on summary judgment, are all going to  
25 be a subject for discovery on May 2, I believe it is. And so

1 debtor's suggestion is that we not attempt to cram into May 7,  
2 8 or 9 one day of product I.D. trial on these 26 buildings,  
3 that instead we take either the 30th or the 31st, which long  
4 ago was set aside for no hazard, but events have kind of caught  
5 up with us and my guess is we're not going to do no hazard on  
6 that date, and handle product I.D. of whatever is remaining on  
7 these 26 buildings. And, again, Mr. Speights and I have agreed  
8 we're going to use the same process we've already used, so  
9 hopefully there won't 26, but, whatever there is, we try it in  
10 one day after we create a piece of paper that creates a record  
11 as to why they don't have sufficient evidence that it's a Grace  
12 product in these buildings.

13 THE COURT: Mr. Speights?

14 MR. SPEIGHTS: I'm not going to respond to Mr.  
15 Restivo's argument about what we could do if Your Honor does  
16 not agree with my position, because I think my position, first  
17 of all, is absolutely correct, but number two is I still don't  
18 think there's an objection before Your Honor. I really don't  
19 think we have a waiver issue here. I think we have a no  
20 objection issue.

21 Now, if they filed a motion and sought to amend their  
22 objection, then I might well come in and say they waived that,  
23 but as we sit here there's no product I.D. objection, and what  
24 I've heard is -- and I want to -- and I want to deal with why  
25 there is no product I.D. objection in just a second -- but what

1 I really heard was Mr. Restivo say that somebody just messed  
2 up. Well, I've messed up a few times in my life. No lawyers  
3 are perfect. My question would be, well, when did they  
4 discover they messed up? And if that happened a year ago or  
5 six months ago or three months ago, it was incumbent upon them  
6 at that time to file a motion to say, Your Honor, we messed up,  
7 let us add these objections. And that's not before Your Honor.

8           Then Mr. Restivo suggested that somehow the fact that  
9 on maybe some of these claims they filed C-1 and C-2 objections  
10 that might bootstrap -- I won't use the word ratify -- that  
11 might bootstrap the product I.D. objections. Well, C-1 and C-2  
12 were not product I.D. objections. They were documentation  
13 objections, and if they want to argue documentation objections  
14 they can put that down. I assume that they filed documentation  
15 objections. In fact, I believe on all of these, or almost all  
16 of them, the product I.D. was attached to the initial -- to the  
17 initial claim and was not -- did not -- was not buried in all  
18 these other documents that Mr. Restivo suggested came in later.

19           But what's really telling to me, Your Honor, is in a  
20 pleading filed very recently that Your Honor apparently now is  
21 going to hear on May 2 -- I just have one copy of it, but I'll  
22 share it with Mr. Restivo -- the debtors have filed a motion  
23 for order concerning the amendment or supplementation of  
24 asbestos PD claims. They want to -- the debtors want to enjoin  
25 property damage claimants from further amending their claims in

1 this bankruptcy, and Your Honor has issued an order shortening  
2 the time to respond, and I believe the committee has filed a  
3 response and that's coming up at the May omnibus. But attached  
4 to the motion that the debtors filed, presumably Kirkland &  
5 Ellis, was a proposed order, and in the proposed order, in  
6 Paragraph 2, which after I show it to Mr. Restivo I'll hand up  
7 to the Court, in Paragraph 2 -- Paragraph 1 is the motion is  
8 granted, and Paragraph 2, asbestos PD claimants and their  
9 counsel enjoined from amending or supplementing asbestos PD  
10 claim forms and/or the related supporting documentation in any  
11 way that is related to or has any bearing on adjudication of  
12 debtors' objection in the fifteenth omnibus objection based on  
13 product identification, and here's the key, (Categories C-3A  
14 through F).

15           The debtors -- and I understand Mr. Restivo inherited  
16 this problem. The debtors acknowledge to you that product I.D.  
17 objections are what Speights & Runyon and other claimants say  
18 they are. They are C-3A through F objections and not C-2F  
19 objections, which Grace is now attempting to use to bootstrap  
20 PID (sic) objections in this case. Do you want to see that?

21           THE COURT: Somewhere in this record, but I don't  
22 recall where, is a copy of the fifteenth omnibus. Does anyone  
23 happen to know where? Was it in the -- I don't know if it was  
24 in the State of California or was it in the Grace supplemental  
25 binder?

1 MR. CAMERON: I --

2 THE COURT: It was --

3 MR. CAMERON: I think, Your Honor, what you're  
4 recalling is I think the State of California's response to the  
5 fifteen omnibus objection is in the bound volume --

6 THE COURT: Oh.

7 MR. CAMERON: -- you're looking at there. I don't  
8 believe that the fifteenth omnibus objection itself is there.

9 THE COURT: I have it printed somewhere. I don't --  
10 I just wanted to see what the categories were because I just  
11 don't recall and I don't have it here in front of me to see it.  
12 Do we -- does anybody have a copy of it with them?

13 MR. RESTIVO: Your Honor --

14 MR. SPEIGHTS: I have it on --

15 MR. RESTIVO: I have --

16 MR. SPEIGHTS: -- the computer, but I don't have a  
17 hard copy.

18 MR. RESTIVO: I do have a copy. There are some  
19 stickers on it and there is some highlighting on it, but I  
20 don't know why I highlighted it, so that won't -- if you ignore  
21 my highlighting and the stickers --

22 THE COURT: Would you show it to Mr. Speights? I  
23 just want to -- all I want to do is see the categories, Mr.  
24 Speights. If there's nothing offensive to you in my looking at  
25 Mr. Resivo's copy, that's all I'm trying to take a look at.

1 MR. SPEIGHTS: Number one, I don't have a problem  
2 with Mr. Restivo's highlighting, okay. Apparently what he has  
3 is a copy of the omnibus objection without the attachments.

4 MR. RESTIVO: No, because --

5 MR. SPEIGHTS: Right, I understand --

6 MR. RESTIVO: (indiscernible; simultaneous speech)  
7 more than just --

8 MR. SPEIGHTS: So, I have no problem with Your Honor  
9 looking at it for what it is.

10 THE COURT: It's not going to show me the categories,  
11 though --

12 MR. SPEIGHTS: Well, I think it does discuss the  
13 categories, but I think also the categories are shown on the  
14 attachments as well. So it's incomplete, but I --

15 THE COURT: As long as it --

16 MR. SPEIGHTS: Your Honor has available to you --

17 THE COURT: As long as it tells me the categories,  
18 that's the part that I'm -- I don't care whether it's the  
19 categories by the chart or the categories by the objection. I  
20 just want to know what the categories are because I don't have  
21 a recall of the categories.

22 MR. RESTIVO: Your Honor, I believe it does show  
23 categories. It looks like what -- some of my highlighting  
24 appears to be categories dealing with C. I starting  
25 highlighting on Page 21. I'm not suggesting that's where you



1 have to look, but I think the -- what you're looking for is  
2 somewhere around Page 21 --

3 THE COURT: All right.

4 MR. RESTIVO: -- Paragraph 51.

5 THE COURT: If I could just borrow it for a minute,  
6 please? Thank you.

7 (Pause)

8 THE COURT: No, I think Mr. Speights is correct from  
9 this, that it is Category C-3 that talks about the fact that it  
10 is lack of product identification in Category C-3. In fact,  
11 even the lead-in paragraph that's discussing the property  
12 damage claims starting on Page 21, and then it picks up with  
13 this again further, but if I just look, for example, at  
14 Paragraph 51 that starts on Page 21, it says, "The PD claims  
15 identified on Exhibits C-1 through C-3 fail to provide even the  
16 most basic information needed to support an asbestos PD claim  
17 and should be disallowed and expunged. Specifically, the  
18 claims listed on Exhibit C-1 are invalid because their proofs  
19 of claim are facially incomplete. Claims on Exhibit C-2 are  
20 invalid because the claimant provided insufficient supporting  
21 documentation, and claims on Exhibit C-3 are invalid because  
22 the claimant failed to establish Grace product identification  
23 for the building at issue." And then it goes on, but at the  
24 moment I want to pass that.

25 Then if you go down to Paragraph 71 that begins on

1 Page 27, that is where under Category 3 the Grace objections  
2 start with respect to claims failing to identify a Grace  
3 product and goes on at length with respect to a variety of  
4 product identification problems that Grace picks out from there  
5 for the next several pages. So, I think Mr. Speights is  
6 correct that this document does not identify the claims, unless  
7 the chart then, which is not attached, does put these 26 claims  
8 into Category C-3, and that I don't know because I don't have  
9 the chart here. But if the debtor is agreeing that these  
10 claims are not listed on C-3, then I do not think that they're  
11 identified in the fifteenth omnibus as having been objected to  
12 based on product identification. Kathy, would you give this  
13 back to Mr. Restivo, please?

14 MR. RESTIVO: Your Honor, insufficient information  
15 under C-2 I think is broad enough to cover you haven't proven  
16 product identification. But in answer to the Court's question,  
17 by my notes, I believe the objections listed on the attachment  
18 to the fifteenth omnibus objection were C-2 objections. We're  
19 not contesting that. We are not saying they were C-3  
20 objections. I don't have the document, but they were C-2  
21 objections.

22 THE COURT: Okay.

23 MR. SPEIGHTS: And, Your Honor, not only has Your  
24 Honor indicated agreement with me on that point, Your Honor has  
25 indicated an agreement with Grace on that point because, as I

1 was saying, that's exactly what they have said to you in the  
2 last week or two in the motion before the Court. Does Your  
3 Honor want a copy of this proposed order?

4 THE COURT: No, I don't need that order, Mr.  
5 Speights. I haven't even seen the motion yet, so -- I know  
6 it's been filed. I just haven't seen it yet.

7 MR. SPEIGHTS: Well, it's a matter of record, and  
8 that's the correct position, because, as Your Honor said, in  
9 essence C-1 and C-2 were gateway-type objections and the rest  
10 were product I.D. objections.

11 The only other point I want to make, Your Honor,  
12 because I think it's clear and unmistakable and undisputed that  
13 there were no product I.D. objections to these claims and still  
14 are no product I.D. objections to these claims, is a statement  
15 about serving reports in connection with Canada, Dr. Pinshen.  
16 Clearly in December 2003 in response to -- 2006 in response to  
17 a deadline, my office filed a bunch of reports, which were  
18 attached to the claim form. I think our discovery went out in  
19 February, and clearly in conducting our discovery perhaps it  
20 was then that we realized that these had not -- objected to or  
21 whatever. We conducted our discovery both in written discovery  
22 and in Dr. Lee's deposition and in responses to our motions for  
23 summary judgment, et cetera, based upon what the objections  
24 were, and they did not object to product I.D., and I think,  
25 again, our position is absolutely correct. Thank you, Your

1 Honor.

2 MR. RESTIVO: I would note, Your Honor, that in the  
3 case management order at Paragraph 2 where the Court is talking  
4 about specific objections to PD claims and when they will be  
5 adjudicated, the second sentence says, "The objections that  
6 will be adjudicated as to these PD claims are those asserted in  
7 the fifteenth omnibus objection regarding product  
8 identification and limitations period -- periods (specifically  
9 C-1 through C-4, D-1 through D-6, F-1, F-4 and F-5." D and F I  
10 think go to statute of limitations. It's -- I think there's a  
11 fair inference in that order that -- in that paragraph -- that  
12 when we were talking at that time about product identification  
13 we were talking about specifically C-1 through C-4.

14 THE COURT: Oh, I don't disagree, Mr. Restivo. I  
15 think the issue is really due process issue. I mean, the  
16 problem with the omnibus objections, especially the fifteenth,  
17 is what you pointed out earlier. It did try to encompass  
18 within it thirty-two hundred claims, and it was the method by  
19 which -- or whatever was left of the thirty-two hundred --  
20 forty-two hundred, actually -- claims.

21 MR. RESTIVO: Thirty-nine hundred and fifty were left  
22 at the time, Your Honor.

23 THE COURT: And the problem was that the debtor  
24 wanted to do -- I'm not sure it's a problem. The structure was  
25 that the debtor wanted to do the gateway objections first so

1 that it could winnow down the host of claims to a manageable  
2 number that would actually have to be litigated, and that made  
3 perfect sense. It still makes perfect sense.

4           The difficulty in doing that is that you have to give  
5 notice to the specific claimants who are actually going to be  
6 faced with litigation as to what the nature of the objection is  
7 so that they can prepare for trial, and that's what I was  
8 attempting to get the debtor to do. That's the reason I forced  
9 the categories on the debtor in the first place, because it  
10 seems to me that the Delaware local rule is you can -- you must  
11 put everything in to one objection so that claimants have to  
12 face this issue only once.

13           I was willing, under the circumstances of this case,  
14 to bifurcate that process. I think it makes sense to bifurcate  
15 the process, but there has to be a reasoned and principle way  
16 to do that so that claimants are not forced to come back before  
17 the Court too many times and at the same time the debtor has an  
18 opportunity to do something logically to get the case moved  
19 from A to Z.

20           I thought this was the way to do it, but in the  
21 process the claimants still have a right to know what the  
22 debtor is objecting to, and putting something into a category  
23 that says you haven't given us enough information is not -- on  
24 the documentation side is not necessarily the same thing as  
25 saying, and, oh, by the way, regardless of your documentation,

1 we're going to trial on product I.D. Yes, they can be the same  
2 thing, but they're not necessarily the same thing, and I think  
3 there is a problem. Otherwise, the debtor wouldn't have two  
4 specific categories for that.

5 MR. RESTIVO: My suggestion, Your Honor, on the due  
6 process concerns, although my argument is they clearly  
7 understood of objection because of the Pinshen report, and  
8 maybe I'm trying to make things too simplified and too easy, is  
9 to, in effect, answer the interrogatories that they sent on  
10 product I.D., because we're going to have a statute of  
11 limitations question --

12 THE COURT: But there's no objection raised. If you  
13 haven't raised a C-3 objection -- I think Mr. Speights is  
14 correct, if you answer the interrogatory, there's still no  
15 objection, and that means, as a matter of bankruptcy law, that  
16 the prima facie proof of claim is allowed. So, I think the  
17 debtor has to do something to raise an objection, and, you  
18 know, the concept that you're going to force somebody forever  
19 not to amend an objection, at a certain point in time I think  
20 you're going to cut off objections because that's what the law  
21 says. The debtor has to get out of bankruptcy, and to do that,  
22 you're going to cut off objections, and at some point in time  
23 you're going to cut off proofs of claim for the same reason. I  
24 think the debtor needs to do something to get these objections  
25 raised. I really do think it's a due process matter.

1 MR. RESTIVO: Then I guess my next suggestion is we  
2 will file, by the end of next week, an amended fifteenth  
3 omnibus objection. I'll talk to --

4 THE COURT: Well --

5 MR. RESTIVO: -- co-counsel as to whether that's an  
6 amended fifteenth or whether we make it the --

7 THE COURT: Well --

8 MR. RESTIVO: -- eighty-fifth objection. I --

9 THE COURT: Yes, I would -- if Mr. Speights doesn't  
10 object to this process, rather than trying to amend the  
11 fifteenth, which involves notice to a host of people -- you're  
12 dealing with 26 claims.

13 MR. RESTIVO: Correct, Your Honor.

14 THE COURT: It would seem to me that as a matter of  
15 logic, Mr. Speights is going to have the same objections.  
16 Whether you call you this, you know, a brand new objection to  
17 claim -- 26 claims of the Speights & Runyon claimants or  
18 whether you call it an amended fifteenth objection, his  
19 responses will be the same. Mr. Speights, would you have an  
20 objection to the debtor just filing an objection to your  
21 clients' claims, whatever they're going to be, without waiving  
22 any arguments that you may have raised if this were called an  
23 amended fifteenth, so that we don't have to give notice to all  
24 of those other folks who really don't care about what the  
25 objections to your clients' claims will be?

1 MR. SPEIGHTS: I don't care what the debtor calls it,  
2 Your Honor. Of course, I take the position it's too late. But  
3 whatever they call it -- they can call it whatever they want to  
4 tee it up. I'm the one who said they need to tee it up  
5 somehow.

6 THE COURT: Yes, I just think, you know, we're just  
7 going to cause mass confusion and a whole host of additional  
8 expenses to have to notify hundreds more people when it's just  
9 not necessary when you're dealing with 26 of Mr. Speights's  
10 clients.

11 MR. RESTIVO: We will do that, Your Honor. And I  
12 think he's argued his objection. I appreciate that his  
13 technical argument is it's not time for argument until we file  
14 the motion. I'm wondering whether or not if we file this  
15 motion -- he knows what his arguments are, we know what they  
16 are -- we can have this argument on May 2 or whether we have to  
17 lose more time.

18 THE COURT: I think I understand the arguments.  
19 Unless there's something else you want to brief on the subject,  
20 I'm okay with doing it whenever you want to do it, or if you  
21 want to use that May 7th date, I don't know how -- May 2, Mr.  
22 Restivo, is going to be a very jumbled and jammed day because I  
23 have all of my Delaware cases that day. So if you really do  
24 need an argument day, May 7, since it's free, may be a better  
25 time, and it can be by phone. It's just an argument. Both of



1 you can appear by phone. You don't need to be here for that  
2 purpose.

3 MR. SPEIGHTS: Well, first of all, Your Honor, I am  
4 going to be here on May 2, so my only question is when will the  
5 debtor file its motion, whatever it's called, and then let me  
6 think from there. You would think that I have thought of all  
7 the arguments and Mr. Restivo has thought of all the arguments,  
8 but by the time he runs it through that maze of great lawyers,  
9 they may have some things in the brief that he hadn't thought  
10 of before, or I want to address, or we may have some factual  
11 information in there. I don't have any problem with expediting  
12 the process. I just don't know when he's going to file his  
13 brief and how much time I'll have to deal with it.

14 MR. RESTIVO: Well, I'm going to file an objection.  
15 I don't intend to have much in the way of the law in it. I'm  
16 going to identify as a due process matter what our objections  
17 are to the claims, and so, you know -- we know what the 26  
18 claims are. We know what the objections are. It's simply a  
19 matter of creating a piece of paper that makes sense. If I  
20 don't have it filed by Friday, I'd have it filed by Monday.

21 MR. SPEIGHTS: Well, let me suggest this. Why don't  
22 -- if Your Honor could just put it down for status on May 2.  
23 By then he will have filed it and I'll be able to say whether I  
24 need some time for briefing or I'm ready to argue it on the  
25 7th, whether I want to do it by telephone. Just put it down

1 for status on May 2. We're all going to be here anyway.

2 THE COURT: Well, yes, because Monday is already  
3 April 30th, so if it's not filed till Monday that doesn't allow  
4 for any time for a -- and I do need a response to it.

5 MR. RESTIVO: I will do my best to file it Friday or  
6 Monday. I appreciate Mr. Speights may need a little bit of  
7 time to do a response and the Court may need a little bit of  
8 time. And we'll just see how it goes. I don't want to push  
9 this too fast. The reason our side of the table is pushing is  
10 that clearly, while we aren't there yet, we have gone with  
11 assistance of the Court and all the parties from 620 down to  
12 about 240. Without any deadlines or things set, I truly  
13 believe we would still be at 627, and so I think the process is  
14 a healthy one and it forces myself and people like Mr. Speights  
15 to actually talk about the 26 claims, and to the extent we can  
16 get them off the board, we can do it. And so that's why we're  
17 pushing on our side for short deadlines, but --

18 THE COURT: Well --

19 MR. RESTIVO: -- there's only so many days in a week,  
20 and I appreciate that. We will file our amendment Friday or  
21 Monday, and if you need more time and we can't argue it on May  
22 2nd or the Court needs more time, we'll just deal with it.

23 THE COURT: All right. Well, so you understand, the  
24 Third Circuit judicial conference is Monday and Tuesday, next  
25 Sunday, Monday and Tuesday. So, whatever you file Monday and

1 Tuesday I am not going to see. So, I understand what your  
2 objection is. I think I understand what Mr. Speights' response  
3 is going to be. I doubt very much there are going to be any  
4 surprises, but you're going to -- I'm going to be hearing about  
5 it for the first time at whatever the status conference is on  
6 Monday. My staff will take a look at your -- at the pleadings  
7 that are filed, and they'll give me notes, but this is one of  
8 those instances where I am not going to have seen it in  
9 advance. So, I think it may be better to do a little status  
10 report Monday and then tell me if you need an argument when you  
11 prefer to do it. I think the next omnibus is going to be May  
12 22nd, after May 2nd. So -- I think that's correct. So we --

13 MR. RESTIVO: I think that is correct, Your Honor.

14 THE COURT: We have all kinds of choices for -- I  
15 mean, you've got -- Grace has my life tied up for the next  
16 three months. So, you know, there are all kinds of choices of  
17 dates to do this argument. You know, pick one. It's --

18 MR. RESTIVO: That's all we have. Thank you, Your  
19 Honor.

20 MR. SPEIGHTS: Thank you, Your Honor.

21 MR. CAMERON: Your Honor, one question. You  
22 mentioned a status on Monday. Do you mean a status on --

23 THE COURT: On May 2nd. I'm sorry.

24 MR. CAMERON: Okay. On May 2nd, okay.

25 THE COURT: Yes. All right. So the objection will

1 be filed by Monday, Mr. Speights. I'll put this on for status,  
2 because I don't even know whether you will have a chance to  
3 respond to it by May 2nd. We'll just find out how much time  
4 you need and what schedule makes sense. But please, before  
5 court on May 2nd, please do talk so that you do have a schedule  
6 that you can propose.

7 MR. RESTIVO: We will do so, Your Honor.

8 THE COURT: All right. Thank you. We adjourned.

9 Thanks.

10 \* \* \* \* \*

11 C E R T I F I C A T I O N

12 I, DENISE M. O'DONNELL, court approved transcriber,  
13 certify that the foregoing is a correct transcript from the  
14 official electronic sound recording of the proceedings in the  
15 above-entitled matter, to the best of my ability.

16

17 /s/ Denise M. O'Donnell

18 DENISE M. O'DONNELL

19 J&J COURT TRANSCRIBERS, INC. Date: May 1, 2007

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